

REMARKS

Responsive to the Office Action dated July 13, 2005, Applicant hereby makes the following response. Claims 1-10 have been withdrawn as being drawn to a nonelected invention. Accordingly, Claims 10-20 remain pending for prosecution with Claims 10 and 16 being independent.

I. Rejection of Claims under 35 U.S.C. § 102(b)

Claims 10-13 and 16-20 have been rejected under 35 U.S.C. § 102(b), as being anticipated by U.S. Patent No. 2,719,663 to Meyer-Jagenberg. For the following reasons, Applicant respectfully requests reconsideration and withdrawal of this rejection.

Applicant respectfully submits that Meyer-Jagenberg does not anticipate Applicant's invention as claimed because Meyer-Jagenberg fails to teach every element and limitation of the claims at issue. In particular, Meyer-Jagenberg fails to teach a disc that displays evidence of having been separated after the first separation. The Office Action asserts a "display of evidence of having been separated at edge 4." However, the reference sign 4 merely refers to the cut edges of the aperture flap 3. There is no disclosure whatsoever that the cut edges 4 display evidence of having been separated from the aperture flap 3. Moreover, Meyer-Jagenberg also fails to teach a container body having at least one defining an upper opening and a disc wherein the upper opening defines the shape of the disc. Rather, Meyer-Jagenberg teaches an aperture cover cut in and integral with the container wall wherein the aperture cover defines a rip-open flap. Finally, Meyer-Jagenberg fails to teach a tab adhered to the disc at the periphery of the aperture. Rather, Meyer-Jagenberg teaches an adhesive that connects the discharge-aperture flap 3 with the lower surface of the rip-open flap 2. Therefore, because Meyer-Jagenberg clearly does

not teach all of the elements of Applicant's independent Claims 10 and 16 and the claims depending therefrom, Meyer-Jagenberg does not anticipate the invention as claimed.

II. Rejection of Claims under 35 U.S.C. § 103(a)

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claim combination and the reasonable expectation of success must both be found in the prior art, and not based on Applicant's disclosure. In re Vaeck, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

A. Rejection of Claims 10, 11, 12 and 16-20 over Meyer-Jagenberg '151 in view of Barnes or Johnson

Claims 10, 11, 12, and 16-20 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 2,847,151 to Meyer-Jagenberg in view of either U.S. Patent No. 2,896,839 to Barnes et al. or U.S. Patent No. 3,768,719 to Johnson. For the following reasons, Applicant respectfully requests reconsideration and withdrawal of this rejection.

Meyer-Jagenberg does not teach or suggest the claimed invention. In particular, Meyer-Jagenberg fails to teach or suggest a disc that displays evidence of having been separated after the first separation. Moreover, Meyer-Jagenberg also fails to teach or suggest a container body having at least one defining an upper opening and a disc wherein the upper opening defines the shape of the disc. Rather, Meyer-Jagenberg teaches a discharge opening covered from beneath by a foil layer and from the top by a cut portion of a flap. Finally, Meyer-Jagenberg fails to teach a tab adhered to the disc at the periphery of the aperture. As stated in the Office Action,

the cited reference does not teach or suggest adhesive adhered to the periphery of the aperture. Thus, Applicant respectfully submits that the Office Action itself supports the conclusion that Meyer-Jagenberg does not teach or suggest the claimed invention.

Barnes and Johnson also fail to teach or suggest the present invention as claimed.

Neither reference teaches or suggests a disc that displays evidence of having been separated after the first separation. Moreover, neither reference teaches or suggests a container body having at least one defining an upper opening and a disc wherein the upper opening defines the shape of the disc. It is asserted in the Office Action that both Barnes and Johnson teach adhesive adhered to the periphery of the aperture. However, Barnes only teaches a cover flap coated on its underside with an adhesive and, if desired, that portion of the carton beneath the flap can be coated as well. Barnes does not teach or suggest an adhesive adhered to the periphery of the aperture. Similarly, Johnson teaches adhesively securing a liner inside the carton by bands of adhesive disposed therebetween around the perimeter of the liner. There is no teaching or suggestion of adhesive being adhered to the periphery of the aperture.

Prima facie obviousness requires that there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings. No such suggestion or motivation exists in Meyer-Jagenberg, Barnes or Johnson to provide a tamper-evident, reclosable closure for dispensing consumer items from a container including a disc that displays evidence of having been separated after the first separation, a container body having at least one defining an upper opening and a disc wherein the upper opening defines the shape of the disc, and adhesive adhered to the periphery of the aperture. Moreover, there is no expectation of success when Meyer-Jagenberg, Barnes or Johnson are combined in that their combination would not result in

a working reclosable paperboard closure similar to that of Applicant. Finally, the prior art references, when combined, must teach or suggest all the claim limitations. As discussed above, none of the cited references teach or suggest all of the elements of Applicant's independent Claims 10 and 16. Unless all the elements are taught by the references, there can be no success in modifying them.

Thus, at the time the present invention was made, none of the cited references teach or describe all of the limitations claimed by Applicant in independent Claims 10 and 16. It would therefore not have been obvious to one of ordinary skill in the art to provide a tamper-evident, reclosable closure for dispensing consumer items from a container including a disc that displays evidence of having been separated after the first separation, a container body having at least one defining an upper opening and a disc wherein the upper opening defines the shape of the disc, and adhesive adhered to the periphery of the aperture. Accordingly, independent Claims 10 and 16 and the claims depending therefrom are nonobvious under § 103(a).

B. Rejection of Claims 14-15 over Meyer-Jagenberg '151 in view of Schmidt

Claims 14 and 15 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over the Meyer-Jagenberg '151 rejection, as set forth above, and further in view of U.S. Patent No. 6,082,614 to Schmidt. For the following reasons, Applicant respectfully requests reconsideration and withdrawal of this rejection.

As discussed above, Meyer-Jagenberg does not teach or suggest the claimed invention. In particular, Meyer-Jagenberg fails to teach or suggest a disc that displays evidence of having been separated after the first separation. Moreover, Meyer-Jagenberg also fails to teach or suggest a container body having at least one defining an upper opening and a disc wherein the upper opening defines the shape of the disc. Rather, Meyer-Jagenberg teaches a discharge

opening covered from beneath by a foil layer and from the top by a cut portion of a flap. Finally, Meyer-Jagenberg fails to teach a tab adhered to the disc at the periphery of the aperture. As stated in the Office Action, the cited reference does not teach or suggest adhesive adhered to the periphery of the aperture. Thus, Applicant respectfully submits that the Office Action itself supports the conclusion that Meyer-Jagenberg does not teach or suggest the claimed invention.

Similarly, Schmidt also fails to teach or suggest a disc that displays evidence of having been separated after the first separation, a container body having at least one defining an upper opening and a disc wherein the upper opening defines the shape of the disc, and adhesive adhered to the periphery of the aperture. *Prima facie* obviousness requires that there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings. No such suggestion or motivation exists in Meyer-Jagenberg or Schmidt to provide a tamper-evident, reclosable closure for dispensing consumer items from a container including a disc that displays evidence of having been separated after the first separation, a container body having at least one defining an upper opening and a disc wherein the upper opening defines the shape of the disc, and adhesive adhered to the periphery of the aperture. Moreover, there is no expectation of success when Meyer-Jagenberg and Schmidt are combined in that their combination would not result in a working reclosable paperboard closure similar to that of Applicant. Finally, the prior art references, when combined, must teach or suggest all the claim limitations. As discussed above, neither of the cited references teach or suggest all of the elements of Applicant's independent Claim 10. Unless all the elements are taught by the references, there can be no success in modifying them.

Thus, at the time the present invention was made, neither of the cited references teach or describe all of the limitations claimed by Applicant in independent Claim 10. It would therefore not have been obvious to one of ordinary skill in the art to provide a tamper-evident, reclosable closure for dispensing consumer items from a container including a disc that displays evidence of having been separated after the first separation, a container body having at least one defining an upper opening and a disc wherein the upper opening defines the shape of the disc, and adhesive adhered to the periphery of the aperture. Accordingly, independent Claim 10 and Claims 14 and 15 that depend therefrom are nonobvious under § 103(a).

C. Rejection of Claims 10-20 over Negoro in view of Barnes or Johnson

Claims 10-20 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 2,926,832 to Negoro in view of either Barnes et al. or Johnson. For the following reasons, Applicant respectfully requests reconsideration and withdrawal of this rejection.

Negoro does not teach or suggest the claimed invention. In particular, Negoro fails to teach or suggest a disc that displays evidence of having been separated after the first separation. Moreover, Negoro also fails to teach or suggest a container body having at least one defining an upper opening and a disc wherein the upper opening defines the shape of the disc. Rather, Negoro teaches a tubular body formed of a regular rectangular sheet that includes four sidewalls each having an outwardly turned flange. Finally, Negoro fails to teach a tab adhered to the disc at the periphery of the aperture. As stated in the Office Action, the cited reference does not teach or suggest adhesive adhered to the periphery of the aperture. Thus, Applicant respectfully submits that the Office Action itself supports the conclusion that Negoro does not teach or suggest the claimed invention.

Barnes and Johnson also fail to teach or suggest the present invention as claimed.

Neither reference teaches or suggests a disc that displays evidence of having been separated after the first separation. Moreover, neither reference teaches or suggests a container body having at least one defining an upper opening and a disc wherein the upper opening defines the shape of the disc. It is asserted in the Office Action that both Barnes and Johnson teach adhesive adhered to the periphery of the aperture. However, Barnes only teaches a cover flap coated on its underside with an adhesive and, if desired, that portion of the carton beneath the flap can be coated as well. Barnes does not teach or suggest an adhesive adhered to the periphery of the aperture. Similarly, Johnson teaches adhesively securing a liner inside the carton by bands of adhesive disposed therebetween around the perimeter of the liner. There is no teaching or suggest of adhesive being adhered to the periphery of the aperture.

Prima facie obviousness requires that there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings. No such suggestion or motivation exists in Negoro, Barnes or Johnson to provide a tamper-evident, reclosable closure for dispensing consumer items from a container including a disc that displays evidence of having been separated after the first separation, a container body having at least one defining an upper opening and a disc wherein the upper opening defines the shape of the disc, and adhesive adhered to the periphery of the aperture. Moreover, there is no expectation of success when Negoro, Barnes or Johnson are combined in that their combination would not result in a working reclosable paperboard closure similar to that of Applicant. Finally, the prior art references, when combined, must teach or suggest all the claim limitations. As discussed above, none of the cited

references teach or suggest all of the elements of Applicant's independent Claims 10 and 16.

Unless all the elements are taught by the references, there can be no success in modifying them.

Thus, at the time the present invention was made, none of the cited references teach or describe all of the limitations claimed by Applicant in independent Claims 10 and 16. It would therefore not have been obvious to one of ordinary skill in the art to provide a tamper-evident, reclosable closure for dispensing consumer items from a container including a disc that displays evidence of having been separated after the first separation, a container body having at least one defining an upper opening and a disc wherein the upper opening defines the shape of the disc, and adhesive adhered to the periphery of the aperture. Accordingly, independent Claims 10 and 16 and the claims depending therefrom are nonobvious under § 103(a).

D. Rejection of Claims 10-20 over Negoro in view of Kuchler

Claims 10-20 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 2,926,832 to Negoro, as set forth above, and further in view of U.S. Patent No. 2,858,060 to Kuchler. For the following reasons, Applicant respectfully requests reconsideration and withdrawal of this rejection.

Negoro does not teach or suggest the claimed invention. In particular, Negoro fails to teach or suggest a disc that displays evidence of having been separated after the first separation. Moreover, Negoro also fails to teach or suggest a container body having at least one defining an upper opening and a disc wherein the upper opening defines the shape of the disc. Rather, Negoro teaches a tubular body formed of a regular rectangular sheet that includes four sidewalls each having an outwardly turned flange. Finally, Negoro fails to teach a tab adhered to the disc at the periphery of the aperture. As stated in the Office Action, the cited reference does not teach or suggest adhesive adhered to the periphery of the aperture. Thus, Applicant respectfully

submits that the Office Action itself supports the conclusion that Negoro does not teach or suggest the claimed invention.

Similarly, Kuchler also fails to teach or suggest a disc that displays evidence of having been separated after the first separation, a container body having at least one defining an upper opening and a disc wherein the upper opening defines the shape of the disc, and adhesive adhered to the periphery of the aperture. *Prima facie* obviousness requires that there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or combine reference teachings. No such suggestion or motivation exists in Negoro or Kuchler to provide a tamper-evident, reclosable closure for dispensing consumer items from a container including a disc that displays evidence of having been separated after the first separation, a container body having at least one defining an upper opening and a disc wherein the upper opening defines the shape of the disc, and adhesive adhered to the periphery of the aperture. Moreover, there is no expectation of success when Negoro and Schmidt are combined in that their combination would not result in a working reclosable paperboard closure similar to that of Applicant. Finally, the prior art references, when combined, must teach or suggest all the claim limitations. As discussed above, neither of the cited references teach or suggest all of the elements of Applicant's independent Claims 10 and 16. Unless all the elements are taught by the references, there can be no success in modifying them.

Thus, at the time the present invention was made, neither of the cited references teach or describe all of the limitations claimed by Applicant in independent Claims 10 and 16. It would therefore not have been obvious to one of ordinary skill in the art to provide a tamper-evident, reclosable closure for dispensing consumer items from a container including a disc that displays

evidence of having been separated after the first separation, a container body having at least one defining an upper opening and a disc wherein the upper opening defines the shape of the disc, and adhesive adhered to the periphery of the aperture. Accordingly, independent Claims 10 and 16 and the claims depending therefrom are nonobvious under § 103(a).

III. Conclusion

If any issue regarding the allowability of any of the pending claims in the present application could be readily resolved, or if other action could be taken to further advance this application such as an Examiner's amendment, or if the Examiner should have any questions regarding the present amendment, it is respectfully requested that the Examiner please telephone Applicant's undersigned attorney in this regard. Should any additional fees be necessitated by this response, the Commissioner is hereby authorized to deduct such fees from Deposit Account No. 11-0160.

Respectfully submitted,

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